# Burlington CSD/AFSame Council 61 (support)

2002-2003 Ceo 990 Sector 3

#### IN THE MATTER OF THE IMPASSE BETWEEN

THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 61, LOCAL 3671,	) IOWA PUBLIC EMPLOYMENT ) RELATIONS BOARD ) CASE NO. CEO 990/3 ) )
Union,	) }
and	)
THE BURLINGTON COMMUNITY SCHOOL DISTRICT,	) ) ) DECISION AND AWARD ) OF
Employer.	) ARBITRATOR

#### APPEARANCES

#### For the Union:

Otto Groenewald
Business Representative
The American Federation of
State, County and Municipal
Employees, Council 61
4320 N.W. Second Avenue
Des Moines, IA 50313

#### For the Employer:

Sue L. Seitz
Belin, Lamson, McCormick,
Zumbach & Flynn, P.C.
Attorneys at Law
2000 Financial Center
666 Walnut Street
Des Moines, IA 50309

On July 8, 2003, in Burlington, Iowa, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Iowa Public Employment Relations Act (the "Act"), as amended, to resolve collective bargaining issues about which the parties are at impasse.

#### BACKGROUND

The Employer (sometimes, referred to as the "District") operates the public schools in Burlington, Iowa. The Union is the collective bargaining representative of the employees of the Employer who are classified as Associates and Secretaries and who hold miscellaneous other clerical classifications.

The parties have agreed upon most of the provisions of a labor agreement that will be effective during the school year beginning July 1, 2003, and ending June 30, 2004. They have not been able to resolve their differences, however, with respect to three issues, or "impasse items," which I have entitled, as follows:

Wages

II: Personal Leave Days.

III: Change In Wage Class For Particular Positions.

In this proceeding, the parties have adopted their own impasse resolution procedures under Section 20.19 of the Act, whereby they have agreed 1) to waive the fact-finding procedure established by the Act as part of its impasse resolution process, 2) to use the Act's arbitration procedure for resolving their impasse on the issues that they have not been able to settle, 3) to give me the authority to act as the sole arbitrator in that procedure, and 4) to waive any requirements established by the Act that their labor agreement be finally resolved by a particular date or that the award in this proceeding be issued by a particular date.

The parties have, however, elected to use the limitations imposed by the Act upon the discretion of an arbitrator to

fashion an award. Thus, they have agreed that, in accord with the provisions of the Act, my authority in this proceeding is limited in the following manner. The impasse items must be resolved by "final offer, issue-by-issue" arbitration rather than by conventional arbitration. Therefore, with respect to each issue at impasse, I must select either the entire final position of the Employer or the entire final position of the Union, and I have no discretion either to award part of the position of one or the other of the parties or to include in my award any variation from the final position selected.

In deciding the issues in this proceeding, I have considered, among others, the factors specified in the Act as those that must be considered by a panel of arbitrators.

Section 20.22, Subdivision 9, Code of Iowa. The text of that subdivision is set out below:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The Employer operates six elementary schools, three middle schools, one senior high school and one alternative

senior high school. The Employer's certified student enrollment as of September 2, 2002, was 4,859. Under the formula used by the Iowa Department of Education, that certified enrollment determines the Employer's Regular Program Growth for the 2003-04 school year. That certified enrollment was 168 fewer than the certified enrollment for the previous year, and the Employer estimates that its certified enrollment as of September, 2003, will have declined by an additional sixty-five students.

The Employer has 710 employees in regular employment and additional employees in part-time employment. At the time of the hearing in this matter, 167 employees held positions in classifications represented by the Union.

The terms and conditions of employment of bargaining unit members are currently established by a recently expired two-year agreement, with a duration from July 1, 2001, through June 30, 2003 (the "current labor agreement").

#### ISSUE I: WAGES

Article X of the current labor agreement establishes the current hourly wage rates of employees through a wage schedule. The wage schedule sets wage rates by use of four Wage Classes, Class A, Class B, Class C and Class D, and nineteen annual steps, the first of which is listed as "2" and the last, as "LG." Although the wage schedule sets a "Base" wage rate of \$6.90, the lowest wage rate on the schedule, as written, is \$7.03 -- in Class A, Step 2.

Below, the current wage schedule is set out:

Step	Class A	Class B	Class C	<u>Class D</u>
2	\$ 7.03	\$ 7.45	\$ 7.91	\$ 8.40
3	7.16	7.59	8.06	8.56
4	7.29	7.73	8.21	8.72
5	7.42	7.87	8.36	8.89
6	7.54	8.01	8.51	9.05
7	7.67	8.15	8.66	9.21
8	7.80	8.29	8.81	9.37
9	7.93	8.42	8.96	9.54
10	8.06	8.56	9.11	9.70
11	8.19	8.70	9.26	9.86
12	8.32	8.84	9.41	10.02
13	8.45	8.98	9.56	10.18
14	8.57	9.12	9.71	10.35
15	8.70	9.26	9.86	10.51
16	8.83	9.40	10.01	10.67
17	8.96	9.54	10.16	10.83
18	9.09	9.68	10.31	10.99
19	9.22	9.81	10.46	11.16
$\mathbf{L}\mathbf{G}$	9.72	10.31	10.96	11.66

#### The Union's Position.

For the new contract year, the Union proposes that each wage rate established by the current wage schedule be increased by \$0.25.

#### The Employer's Position.

For the new contract year, the Employer proposes that each wage rate established by the current wage schedule be increased by \$0.17.

#### Decision and Award.

The Employer makes the following arguments. Because its certified enrollment has declined persistently over the past eleven years -- from 5,765 in 1991-92 to 4,859 in 2002-03 -- it has suffered substantial restrictions in its Regular Program

Growth ("new money"). It has averaged only 1.64% in new money over those eleven years, and, over the past three years, new money has been even less -- .91% for 2001-02, 0% for 2002-03 and 0% for the forthcoming year, 2003-04. Nevertheless, the increases that it has already settled on all of its other employees total \$852,694. It increased wages and benefits of Drivers by 2.92%, of Custodians by 3.49%, of Teachers by 3.73%, of Administrators by 2.61%, of Professional Services employees by 3.19%, of Confidential Secretaries by 3.19%, and of Maintenance Employees by 3.08%. Its position in this proceeding, which would increase bargaining unit wages by \$0.17 per hour, would provide a total package increase of \$70,566 or 3.69%.\* That increase would be higher than the total package increase provided to all other employees of the District, except the Teachers, who received 3.73%.

The Employer calculates the total package cost of its proposals at \$70,566, including step advancements and FICA and IPERS contributions, and including the cost of the Employer's proposal, discussed below, to move five bargaining unit employees to a higher pay grade. Employer calculates the total package cost of the Union's proposals at \$88,779, including step advancements and FICA and IPERS contributions, and including the cost of the Union's proposals, discussed below, 1) to move two bargaining unit employees to a higher pay grade and 2) to change the contract provision relating to personal leave days. Although the Union's costing of the parties' positions differs in that it does not include the increased cost of FICA and IPERS contributions, the parties have stipulated that the Employer's costing is accurate within about \$200, if FICA and IPERS increases are included in costing. Based upon a 2002-03 total package cost of bargaining unit wages and benefits of \$1,912,013, the Employer's total package increase, as proposed, would equal 3.69%, and the Union's total package increase, as proposed, would equal 4.64%.

Further, the Employer argues that it is using every authorized tax available that can be used to fund wages. The Employer also points out that the Legislature has eliminated budget guarantees as of next year, a change that will have a substantial adverse impact on its ability to fund operations.

The Employer argues that the most relevant external comparisons can be drawn from a group of school districts that have about the same size enrollment and from the several school districts that are adjacent to the Employer -- the school districts of Muscatine, Linn-Marr, Marshalltown, Ottumwa, Southeast Polk, Ames, Clinton, Johnston, Mason City, Fort Dodge, Cedar Falls, Bettendorf, West Burlington, Mediapolis, Fort Madison and Danville. The Employer urges that these comparisons show that wages of bargaining unit members fall within the range of wage rates paid in the districts compared and that the Employer's proposal to raise wages by \$0.17 per hour will maintain that relationship.

The Employer also argues that, in order to finance wage increases of over 3% for the coming year, it has had to make substantial cuts of general fund expenditures other than wages, and it will pay out a relatively high 83.5% of its general fund budget for wages. Although the District has a significant cash reserve, wage increases, which realistically must be a continuing expense from year to year, should not be funded from cash reserves that will be exhausted after they are spent.

The Union makes the following arguments. Bargaining unit members are the District's lowest paid employees, and, for that

reason, it is unfair to limit their wage increase to the same percentage that other employees receive. Such a limitation, if it persisted, would cause them each year to fall farther behind in real wages and purchasing power. The Union has not proposed any increase in the Employer's contribution to insurance premiums so that funds will go to increase wages.

The Union argues that the most relevant external comparisons should be made with the five school districts that have the next highest enrollment in the state and the five that have the next lowest enrollment. This group is augmented by the school districts that are in the same athletic conference as the Employer, thus providing a geographic relevance to the comparison. The Union did not, however, include the small school districts in the same county that are included in the Employer's comparison group, urging that they are too small to provide a valid comparison.

In addition, the Union argues that, a comparison of wages using the districts in its comparison group shows 1) that the wages of bargaining unit members are near the bottom and 2) that, if the comparison is made of both wages and the school district insurance contribution, these employees are placed even lower. Even with an award of the Union's position, bargaining unit employees would not move up in relative position when compared to the similar employees in the comparison school districts.

The Union also argues that the budget cuts for 2003-04 resulted in the reduction of twenty-four clerical positions,

providing the Employer with a saving of about \$169,000. The loss of so many personnel doing the same work as bargaining unit members will inevitably cause an increase in the amount of work that the remaining clerical staff must do. That increase in work load should be recognized by an award of the Union's position. In addition, new state and federal educational requirements will further increase the work load of bargaining unit members.

The Union argues that the Employer has a substantial Unspent Balance in its general fund spending authority -\$6,377,840 at the end of the 2001-02 school year. The Union points out that in the five years previous to 2001-02, the Unspent Balance has risen in each year from \$854,514 at the end of 1996-97. Further, the Union points out that this large remaining spending authority is backed by \$5,992,420 in unspent cash balance at the end of 2001-02. According to the Union, these balances belie the Employer's plea of inability to pay the small additional amount that the Union's position would cost. The Union also notes that the regular turnover of personnel can be expected to provide some savings to the Employer -- as older better paid employees retire and are replaced by new employees at the lowest paid step on the wage schedule.

I award the position of the Employer on this issue. I recognize some justification in the Union's argument that lower paid employees should have a relatively higher percentage increase than the other, higher paid employees of the Employer, in order to achieve an actual increase that is close to the same

in purchasing power. Nevertheless, because of the Employer's constrained financial condition, I award its position on wages, which, with the other small increases gained by the Union on the other issues at impasse, will give bargaining unit employees a total package at the top or almost at the top of the range of increases received by all District employees.

External comparisons favor the Union's position slightly, but not sufficiently to persuade me that, in the poor state of the Employer's financial condition, it should be required to provide a total package increase to these employees that exceeds by a substantial percentage what other employees of the Employer have received.

#### ISSUE II: PERSONAL LEAVE DAYS

Article XIV, Section 6, of the current labor agreement is set out below:

Personal Leave. Upon notification to the principal-immediate supervisor by noon of the preceding day, each regular, full-time employee shall be authorized two (2) days of personal leave during each school year. One (1) leave day per school year shall be with pay. The second (2nd) leave day per school year will result in the deduction of one-third (1/3) of the employee's daily pay. Personal leave shall not be granted the first (1st) or the last work day in the school year. Personal leave may not be taken the day prior to or following any vacation, holiday, or recess period except by authorization of the Director of Human Resources.

#### The Union's Position.

The Union proposes that the section set out above (which, because of the parties' agreement to delete two sections of Article XIV, would be renumbered as Article XIV, Section 4) be

amended to provide that the Employer pay the all of the wages of employees for both personal leave days, thus eliminating the current provision that "the second (2nd) leave day per school year will result in the deduction of one-third (1/3) of the employee's daily pay."

#### The Employer's Position.

The Employer opposes the change sought by the Union.

#### Decision and Award.

The Union argues that, of its sixteen comparison school districts, thirteen provide at least two personal leave days at full pay, and several of them provide addition fully paid leave days. Further, the Union argues that all other employees of the Employer receive two fully paid personal leave days.

The Employer estimates the cost of the Union's proposal to be about \$2,000, but points out that the actual cost depends upon the number of employees who elect to take a second personal leave day. During the 2002-03 school year, about half of them did so. The Union estimates the cost of this proposal to be slightly less than the \$2,000 estimate made by the Employer.

I award the Union's position on this issue. External and internal comparisons support the change, which will have negligible impact on the Employer's budget.

### ISSUE III: CHANGE IN WAGE CLASS FOR PARTICULAR POSITIONS

Both parties propose that the existing Wage Class of several positions be changed. The Employer opposes the changes

sought by the Union, and the Union opposes the changes sought by the Employer.

#### The Union's Position.

The Union proposes that the Secretary to the Associate Principals at the Burlington High School, currently paid in Wage Class C, be paid in Wage Class D. In addition, the Union proposes that the Attendance Monitor Supervisor, currently paid in Wage Class A, be paid in Wage Class B. Although the Attendance Monitor Supervisor's position is not listed in the current labor agreement, the parties agree that it is a bargaining unit classification. As noted, the Union opposes the changes in Wage Class proposed by the Employer, described below.

#### The Employer's Position.

The Employer proposes that five Special Education

Associates, currently paid in Wage Class A, be paid in Wage

Class B. The Employer opposes the changes proposed by the Union described above.

#### Decision and Award.

The Union points out that the only reason it opposes the changes in Wage Class sought by the Employer is that those changes will impact cost and the Union prefers to allocate increases in cost to the changes it proposes -- on this impasse item and the others.

Under the current labor agreement, the Special Education Associates who work in certain programs -- Behavior Disorder,

Preschool Handicapped, Mental Disabilities/Trainable, Severe and Profound Handicapped and Multi-Categorical — are paid in Wage Class B. The remaining five Special Education Associates, who work in the Learning Disabilities Program or are assigned to assist with students in regular education classrooms, are paid in Wage Class A. The Employer argues that changes in education requirements have made the work of these five Special Education Associates more difficult. More Special Education Students are now "mainstreamed" into regular education classrooms, and these Special Education Associates must often accompany their students to the regular education classrooms, with a corresponding intensification of the work they must do.

The Union argues that the work done by the Attendance
Monitor Supervisor, who is now paid in Wage Class A, resembles
in difficulty the work of office and clinic clerks, who are paid
in Wage Class B. In addition, the employee in this position
must now be present during physical searches of students and
their property, when contraband is suspected.

The Union argues that the Secretary to the Associate Principals at the High School, now paid in Wage Class C, has duties similar to those of other secretarial employees -- the Principal Secretary, the Bookkeeper and the Registrar -- who are paid in Wage Class D.

As I have noted above, the Union's opposition to the Employer's proposal to upgrade the Wage Class of the five Special Education Associates is based only on its determination

that money spent on upgrades should first be spent on upgrading the Wage Class of the Secretary to the Associate Principals at the High School and the Attendance Monitor Supervisor.

The Employer opposes the Union's proposal to upgrade the Attendance Monitor Supervisor because it regards the duties of that position as substantially similar to the duties of other bargaining unit positions that are paid in Wage Class A. The Employer concedes some justification for upgrading the Wage Class of the Secretary to the Associate Principals at the High School, but would prefer to have that occur if the current incumbent can meet the testing requirements for a Class D position — testing that now occurs twice a year.

The evidence shows that the estimated cost of the Employer's proposal to upgrade the five Special Education Associate positions would be about \$2,943, including FICA and IPERS, and that the estimated cost of the Union's proposal to upgrade two positions would be about \$1,736, including FICA and IPERS.

I award the proposal of the Union. The evidence favoring an upgrade of positions supports the proposals of both parties, but my authority in this proceeding requires that I award the proposal of one party or the other, with no discretion to modify that proposal. In this circumstance, I select the Union's proposal 1) because its cost is slightly less than the cost of the Employer's proposal, and 2) because it appears that the Employer may be able to obtain the Union's agreement to upgrade the positions of the five Special Education Associates after

this proceeding is concluded, thus accomplishing the upgrade of all seven positions at issue -- a result supported by the evidence.

Thomas P. Gallagher, Arbitrator

July 24, 2003

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#### CERTIFICATE OF SERVICE

I certify that on the 24th day of July, 2003, I served the foregoing Decision and Award of Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

#### For the Union:

Mr. Otto Groenewald Business Representative American Federation of State, County and Municipal Employees, Council 61 4320 N.W. Second Avenue Des Moines, IA 50313

#### For the Employer:

Ms. Sue L. Seitz
Belin, Lamson, McCormick,
Zumbach & Flynn, P.C.
Attorneys at Law
2000 Financial Center
666 Walnut Street
Des Moines, IA 50309

I further certify that on the 24th day of July, 2003, I will submit this Decision and Award for filing by mailing it to the Iowa Public Employment Relations Board, 514 Locust, Suite 202, Des Moines, Iowa 50309.

July 24, 2003

Phomas P. Gallagher, Arbitrator